



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Cheng (Re), 2019 ONSEC 35

Date: 2019-10-21

File No. 2019-37

**IN THE MATTER OF
BENEDICT CHENG, FRANK SOAVE, JOHN DAVID ROTHSTEIN AND
ERIC TREMBLAY**

**REASONS AND DECISION
(Section 144 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: In writing

Decision: October 21, 2019

Panel: Lawrence P. Haber Commissioner and Chair of the Panel

**Submissions
by:** Katrina Gustafson For Staff of the Commission
Matthew Britton

Shara N. Roy For Benedict Cheng
Brian Kolenda

REASONS AND DECISION

I. THE APPLICATION

- [1] This is an application made by Staff of the Ontario Securities Commission (**Staff of the Commission**), pursuant to s. 144 of the Securities Act¹ (the **Act**), to revoke an oral decision made by the Commission on December 19, 2017 (the **Confidentiality Order**).
- [2] Staff also requested that its application be heard in writing. As Benedict Cheng (**Mr. Cheng**) did not oppose, pursuant to Rule 23 of the Commission's *Rules of Procedure and Forms*² the application was heard in writing.

II. BACKGROUND

- [3] The Confidentiality Order was made in the context of the motion regarding privilege brought by Mr. Cheng which was heard on December 18-22, 2017 (the **Privilege Motion**). On December 19, 2017, the panel ordered that the evidence and submissions on the Privilege Motion be heard *in camera* on the basis that solicitor-client privilege was at issue.
- [4] The Panel later dismissed the Privilege Motion in a decision issued on January 10, 2018 (the **Privilege Motion Decision**)³ and found that solicitor-client privilege did not apply.

III. THE ISSUE

- [5] The issue before me is to determine whether the Confidentiality Order should be revoked.

IV. ANALYSIS

- [6] Under s. 144 of the Act, the Commission is authorized to revoke or vary a decision of the Commission on the application of, among others, a person affected by such decision if, in the opinion of the Commission, the order would not be prejudicial to the public interest.
- [7] I find that it would not be prejudicial to the public interest to grant the relief requested by Staff. Given that the Privilege Motion Decision found that solicitor-client privilege did not apply, and that solicitor-client privilege was the only basis for the Confidentiality Order, I agree with Staff's position that there is no longer any basis for confidentiality to continue.
- [8] The Privilege Motion Decision is final, Mr. Cheng sought judicial review and his application was quashed by the Ontario Divisional Court⁴ and the Cheng proceeding before the Commission has concluded against all respondents.
- [9] There are no special circumstances present which would support continuing the Confidentiality Order.
- [10] Furthermore, Mr. Cheng, who brought the Privilege Motion and requested the Confidentiality Order, does not oppose the order sought by Staff.

¹ RSO 1990, c S.5

² (2019) 42 OSCB 6528

³ *Cheng (Re)*, 2018 ONSEC 2, (2018) 41 OSCB 819

⁴ *Cheng v Ontario Securities Commission*, 2018 ONSC 2502 (Div Ct)

V. CONCLUSION

[11] For the reasons above, I order that:

1. pursuant to s. 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 23 of the *Commission's Rules of Procedure and Forms*, (2019) 42 OSCB 6528 this application is heard in writing; and
2. pursuant to s. 144 of the Act, the Confidentiality Order is revoked and the following are made public:
 - (a) all exhibits marked and all submissions filed at the Privilege Motion; and
 - (b) the confidential transcripts dated December 19-22, 2017.

Dated at Toronto this 21st day of October, 2019.

"Lawrence P. Haber"

Lawrence P. Haber